

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court’s order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No. 1235 (S/S) Year 2003
R.K. Maurya Junior Clerk in Govt.
Polytechnic Dehradun
Versus.
Director, Technical Education Uttarakhand
and others.

Approved for reporting.

~~Not approved for reporting~~

Date of decision 15.10.2003

Initial of Judge

In the High Court of Uttarakhand at Nainital

Court No.6

Writ Petition No. 1235 of 2003 (S/S)

R.K. Maurya
Junior Clerk in Govt.
Polytechnic Dehradun

.....Petitioner

Vs.

1. Director, Technical Education
Uttarakhand
2. Principal Govt. Polytechnic
Dehradun
3. Brij Pal Singh, Junior Clerk Govt.
Polytechnic Dehradun
4. R.K. Gupta, Steno,
Govt. Polytechnic Dehradun
5. Smt. Sheela Rani,
Junior Clerk in women Polytechnic

.....Respondents

Date of judgment	:-	15.10.2003
Counsel for the Petitioner	:-	Sri S.S. Yadav
Counsel for the Respondent	:-	Sri Maulkhi
		Ms. Farida Siddiqui

Hon'ble Rajesh Tandon, J.

By the present Writ Petition, the petitioner has prayed for issue of a writ, order or direction in the nature of Certiorari quashing the impugned order of transfer dated 20.9.2003 Annexure- 1 to the petition passed by respondent no. 1.

Brief facts giving rise to the present Writ Petition are that the petitioner was appointed as Junior Clerk in Govt. Polytechnic Dehradun in 1987. The petitioner was transferred to interior place-Thal Nadi District Pauri Garhwal. The transfer order was passed on 19.7.2003, the same was communicated to the petitioner on 20.9.2003.

It was stated by the petitioner that the transfer order itself was communicated on 20.9.2003. The grievance of the petitioner is that the transfer order has been communicated in mid-session, therefore, it becomes very difficult for the petitioner to shift his entire family members at the transferred place.

The petitioner has also submitted that the respondent no. 3 Brij Pal Singh, Junior Clerk Govt. Polytechnic Dehradun is working since January 1986 and one Sri R. K. Gupta, Steno, Govt. Polytechnic Dehradun is working since 1980 but they have not been transferred and only the petitioner has been transferred who has joined at Dehradun since 1987. It has also been stated that the mother of the petitioner is about 77 years of age. She is suffering from mental disease and the petitioner is only responsible member of his family who can look after the treatment of his mother.

The petitioner has stated that his daughter is also studying at the concerned institution in 1st year of Computer course.

The transfer order has been passed in public interest therefore no interference is required under Article 226 of the Constitution of India.

The Apex Court in the case of Shilpi Bose and others Vs. State of Bihar and others AIR 1991 SC 532, it has been held by the Apex Court that the Government servant holding a transferable post has no vested right at one place or the other. It has been further held that the transfer orders issued by the Competent Authority do not violate any of his legal rights. The observations of the Apex Court are quoted below:-

“In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The high Court overlooked these aspects in interfering with the transfer orders.”

The Apex Court has observed that the party should approach the higher authorities in the department. The petitioner has already made a representation which has been mentioned as annexure 3 of the writ petition. Authorities concerned shall consider the representation of the petitioner in accordance with the observations made above.

However, liberty is given to the petitioner to place his representation before the authorities who shall decide the same in view of the aforesaid observations.

Consequently the writ petition is disposed of with a direction that the respondent shall decide the representation of the petitioner within a period of one month from today in the light of the observations made aforesaid. The transfer order shall remain in abeyance for a period of six weeks only.

In the light of the above observations, the Writ Petition is disposed of finally. There will be no order as to costs.

(Rajesh Tandon J.)

Dated: 15.10.2003

Rawat